

Exhibit 7

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 OAKLAND DIVISION
 4 DIGITAL REG OF TEXAS, LLC,)
 5 Plaintiff,) No. 12-CV-01971 CW (KAW)
 6 v.)
 7 ADOBE SYSTEMS INCORPORATED,)
 8 et al.,)
 9 Defendants.)
 10
 11
 12
 13
 14
 15 VIDEOTAPED DEPOSITION OF EUGENE B. PHILLIPS, II
 16 Raleigh, North Carolina
 Thursday, April 18th, 2013
 17
 18
 19
 20
 21 Reported By:
 22 Regina Toppins
 23 Court Reporter
 24 File No. 13-15701
 25

09:02
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 18 VIDEOTAPED DEPOSITION OF EUGENE B. PHILLIPS, II,
 19 a witness called on behalf of Defendants, before Regina
 20 Toppins, Notary Public, in and for the State of North
 21 Carolina, at the offices of CaseWorks, Inc., 8601 Six
 22 Forks Road, Raleigh, North Carolina 27615, on Thursday,
 23 the 18th day of August, 2013, commencing at 9:00 a.m.
 24
 25

09:03 1 VIDEOPHOTOGRAPHER: Good morning. We're going on
 09:03 2 the record. The time on the video monitor is 9:01
 09:03 3 a.m. Today's date is April the 18th, 2013. We are
 09:03 4 located at the CaseWorks office, 8601 Six Forks Road
 09:03 5 in Raleigh, North Carolina.
 09:03 6 This marks the beginning of media Number 1
 09:03 7 of the deposition of Eugene B. Phillips, II, in the
 09:03 8 matter of Digital Reg of Texas, LLC, versus Adobe
 09:03 9 Systems Incorporated, et al, in the US District Court,
 09:03 10 Northern District of California, Oakland Division,
 09:03 11 Case Number 12-CV-01971 CW (KAW).
 09:03 12 My name is Brad Cartner. I am a legal video
 09:03 13 specialist here on behalf of Chase Litigation
 09:03 14 Services. The court reporter is Regina Toppins, also
 09:03 15 on behalf of Chase Litigation Services.
 09:03 16 Counsel, would you please identify
 09:03 17 yourselves and state whom you represent.
 09:03 18 MR. REINES: Edward Reines from Weil,
 09:03 19 Gotshal for EA, and Adobe.
 09:03 20 MR. PRICE: Adam Price from Dinovo Price for
 09:03 21 Digital Reg, and Mr. Phillips individually.
 09:03 22 MR. BARCELO: This is Rey Barcelo on the
 09:03 23 phone from Barcelo, Harrison & Walker for Defendant
 09:03 24 Valve Corporation.
 09:03 25 MR. LANG: This is Mark Lang on the phone

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09:04	1	for Erise IP, representing Defendant Ubisoft, Inc.	09:06	1	of which you've worked over the years?
09:04	2	P R O C E E D I N G S	09:06	2	A. I, you know, I own a little of the stock of DRM
09:04	3	EUGENE B. PHILLIPS,	09:06	3	Technologies, LLC, as far as I know anyway.
09:04	4	having been duly sworn, testifies as follows:	09:06	4	Q. Right. And you understand that DRM Technologies
09:04	5	EXAMINATION	09:06	5	has an interest in this lawsuit?
09:04	6	VIDEOGRAPHER: Please begin.	09:06	6	A. Yes.
09:04	7	BY MR. REINES:	09:06	7	Q. Okay. Based on the fact that you've been
09:04	8	Q. Please state your name and address for the	09:07	8	prepared by counsel for Dig Reg for your deposition
09:04	9	record.	09:07	9	today, I'm going to assume you have a general
09:04	10	A. Eugene B. Phillips, II. 5745 Poolside Drive in	09:07	10	understanding of the process, but let me go over some --
09:04	11	Raleigh, North Carolina 27612.	09:07	11	A. Okay.
09:04	12	Q. Are you employed?	09:07	12	Q. -- specifics. During the course of the
09:04	13	A. I'm a private contractor.	09:07	13	deposition I'm going to ask some questions, and then
09:04	14	Q. Who do you work for?	09:07	14	you're responsible for giving answers. During the
09:04	15	A. I work for a number of companies, including	09:07	15	course of the deposition there may be objections, but
09:05	16	myself.	09:07	16	those don't affect your obligation to respond fully and
09:05	17	Q. Okay. Do you have an LLC or anything like that?	09:07	17	accurately unless something is stated to the contrary.
09:05	18	A. No.	09:07	18	A. Okay.
09:05	19	Q. Do you have any association with Vendto?	09:07	19	Q. Do you understand that?
09:05	20	A. I am working in the Vendto project, yes.	09:07	20	A. Yes, I do.
09:05	21	Q. So, you do that on a contract basis; is that	09:07	21	Q. If during the course of the deposition you'd like
09:05	22	right?	09:07	22	to take a walk to stretch your legs, to use the
09:05	23	A. Um-hmm.	09:07	23	lavatory, let me know, and then at an appropriate time
09:05	24	Q. If that's a yes, you need to say.	09:07	24	we'll take a break to do so. Do you understand that?
09:05	25	A. Yes. Excuse me, yes.	09:07	25	A. Yes, I do.

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09:05	1	Q. Have you ever had your deposition taken before?	09:07	1	Q. If during the course of the deposition you don't
09:05	2	A. Never.	09:07	2	understand any question I'm asking, or any aspect of a
09:05	3	Q. Did you meet with counsel for Dig Reg in	09:07	3	question, let me know and as appropriate I'll address
09:05	4	preparing for today?	09:07	4	your concern. If you don't say anything, I'll assume
09:05	5	A. Yes, briefly.	09:07	5	that you fully understand my question; is that fair?
09:05	6	Q. When did you meet?	09:07	6	A. Yes.
09:05	7	A. Yesterday.	09:08	7	Q. The court reporter is taking down what's being
09:05	8	Q. How long was the meeting?	09:08	8	said, as you can tell. In order for that process to
09:05	9	A. An hour.	09:08	9	work, it's important for you to wait for me to complete
09:05	10	Q. Did you -- when before that have you met with the	09:08	10	my question before you give your answer. That can be a
09:05	11	lawyers from Dig Reg in person?	09:08	11	very difficult thing to do.
09:05	12	A. No.	09:08	12	A. Okay.
09:05	13	Q. How about by phone?	09:08	13	Q. It's not a normal everyday conversational thing.
09:05	14	A. I have met with the lawyers, yes, over the course	09:08	14	I can see that you're, like most people, gonna take a
09:05	15	of this entire suit. I've listened in on a few calls,	09:08	15	few reminders to just hold off on speaking, okay?
09:05	16	yeah.	09:08	16	A. Sure.
09:06	17	Q. And what was the purpose for your participation	09:08	17	Q. You understand that?
09:06	18	in those calls?	09:08	18	A. Okay.
09:06	19	A. Just to be aware of the general circumstances.	09:08	19	Q. And also because the court reporter is taking
09:06	20	Q. Were you paid for your time?	09:08	20	down what's being said, it's important that you give
09:06	21	A. No.	09:08	21	answers in the form of words rather than nods and
09:06	22	Q. Are you being paid for your time now?	09:08	22	gesticulations.
09:06	23	A. No.	09:08	23	A. Right.
09:06	24	Q. Do you have continued interest of any kind	09:08	24	Q. Again, I'll keep you clear on that, but to the
09:06	25	economically in any of the vendors, Farley Enterprises	09:08	25	extent that you do it, then I don't have to give

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09:08	1 reminders.	09:11	1 somewhat, yes.
09:08	2 A. Okay.	09:11	2 Q. And what did you do from your graduation from
09:08	3 Q. Let's go through your educational history. You	09:11	3 North Carolina State in 1983 until 1995?
09:08	4 went to North Carolina State; is that correct?	09:12	4 A. I went to work for Northern Telecom. That's what
09:09	5 A. Correct.	09:12	5 it was called back then in the DMS 10 Installation
09:09	6 Q. And you got an Electrical Engineering degree?	09:12	6 Engineering Department. And then at that for five
09:09	7 A. Correct.	09:12	7 years. Then I went into business for myself, which is
09:09	8 Q. What year was that?	09:12	8 always interesting, and I had that for five years. And
09:09	9 A. I got my degree from State in '83, way back.	09:12	9 then I went to work with Chip.
09:09	10 Q. After that did you take courses of at UNC?	09:12	10 Q. What was the nature of the business that you were
09:09	11 A. No, actually graduated from UNC first. I	09:12	11 in for yourself?
09:09	12 graduated in '78 from UNC Chapel Hill.	09:12	12 A. It was a large format flat sheet screen printing
09:09	13 Q. What was the degree?	09:12	13 company, posters, signs.
09:09	14 A. Radio, Television and Motion Pictures.	09:12	14 Q. Nothing not using your EE degree?
09:09	15 Q. Was that a Bachelor's?	09:12	15 A. No.
09:09	16 A. Yes, B. A.	09:12	16 Q. Did you use your EE degree at Total Fax?
09:09	17 Q. And then what was the degree that you got at N.C.	09:12	17 A. Did I use my EE? Certainly as a technology
09:09	18 State?	09:13	18 company, and electro engineering is a technology field;
09:09	19 A. A B.S. CE.	09:13	19 and so, I would say yes.
09:09	20 Q. How come you went back? So, you got a Bachelor's	09:13	20 Q. Now, in terms of your association with Vendto, do
09:09	21 and then you went back to get another Bachelor's?	09:13	21 you have a contract with them?
09:09	22 A. Yeah, I went to State first for a couple of	09:13	22 A. No.
09:09	23 years, got interested in television, transferred to UNC,	09:13	23 Q. So, is it just they ask -- what rate do you
09:09	24 got my degree. Then, in the process of getting my SEC	09:13	24 charge them?
09:09	25 ticket, I got interested in Engineering and went back to	09:13	25 A. Well, it's not set. I'm actually just, you know,

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09:10	1 school got my Engineering degree.	09:13	1 working with them because I'm interested in the project.
09:10	2 Q. When did you meet Mr. Venters?	09:13	2 And I hopefully it's, you know, some equity elbow
09:10	3 A. I met Mr. Venters in 1973.	09:13	3 grease.
09:10	4 Q. What was the circumstances?	09:13	4 Q. How do you get compensated?
09:10	5 A. We both played on our high school football team.	09:13	5 A. Well, we're looking for, you know, it's a
09:10	6 Q. When did you first work with him professionally?	09:13	6 start-up. You're not compensated sometimes.
09:10	7 A. I worked with Chip in a small company called	09:13	7 Q. Okay. So, for whatever work you've done at
09:10	8 Total Fax, a fax broadcasting company, I believe, in '96	09:13	8 Vendto, you haven't received any money?
09:10	9 through '98, I think. Or, excuse me, probably '95 or	09:13	9 A. No.
09:10	10 '96 through '97, I think is correct.	09:13	10 Q. Have you received stock?
09:10	11 Q. How did it come about that you started working	09:13	11 A. Not in Vendto, no. You know, I -- Vendto is a --
09:10	12 with him?	09:13	12 is related to DRM Technologies, LLC. And, you know, I
09:11	13 A. Well, we were friends, and I had a large -- I had	09:14	13 assume by default I will own a little bit of Vendto.
09:11	14 a large format flat screen screen printing company of my	09:14	14 Q. How much time have you spent working on Vendto?
09:11	15 own, and I sold that and was looking for something to	09:14	15 A. I've been working on the project now for, on and
09:11	16 do, and Chip had -- was starting his fax broadcasting	09:14	16 off for since about June of this year -- excuse me, of
09:11	17 company and I went to work with him.	09:14	17 '12. Again, I have other projects I work on.
09:11	18 Q. What role did you have in Total Fax?	09:14	18 Q. How many hours I guess is more my question?
09:11	19 A. I was Operations Manager, you know. I, I ran the	09:14	19 A. I would say that it's, you know, it's a
09:11	20 day-to-day operations.	09:14	20 part-time. I couldn't estimate the hours, you know.
09:11	21 Q. Were you involved in terms of technically	09:14	21 It's a part of my week. It's for a few hours, couple of
09:11	22 developing the product?	09:14	22 hours a day maybe. I would say probably 10 to 15 hours
09:11	23 A. I was a bit. We -- I worked -- we did have some	09:14	23 a week, something like that.
09:11	24 software work done for us in developing our fax	09:14	24 Q. So, in the last week you've worked on the Vendto
09:11	25 broadcasting package, and I was involved in that	09:14	25 project?

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12:07	1	A. It's a basic overview of the DCI system.	12:12	1	you know, when I, you know, there would be many
12:07	2	Q. Of, of the what's that?	12:12	2	infringers. Is that not a terrible answer?
12:07	3	A. DCI system. Just like it says. It's a	12:12	3	Q. No, it's --
12:07	4	10,000-foot shot.	12:12	4	A. Really being honest.
12:08	5	Q. And does this encompass the securing technology?	12:12	5	Q. Trying to process the responsiveness. But with
12:08	6	A. I would have to say no.	12:12	6	respect to Adobe, you don't recall ever reaching any
12:08	7	Q. Turn to Page 018.	12:12	7	conclusion that Adobe was infringing, and you don't
12:08	8	A. Yes, sir.	12:12	8	recall anyone ever saying that?
12:08	9	Q. What were you attempting to show here?	12:12	9	A. I don't recall anyone saying. I don't recall. I
12:08	10	A. I believe I was trying to show our concept behind	12:12	10	don't remember. Personally, you know, like most of the
12:09	11	the Air configuration of our, you know, potential Air	12:12	11	applications I use, some of which were Adobe, from my
12:09	12	product cross platform product.	12:12	12	understanding personally I thought they all probably
12:09	13	Q. I don't see any reference to Adobe in here; is	12:12	13	were -- had some infringement.
12:09	14	there some reason for that?	12:12	14	Q. When you say they all?
12:09	15	A. Well, for me, the DC java applet would have been,	12:12	15	A. I mean, any application that, you know, takes
12:09	16	would have been required to run the Air system for us.	12:12	16	information and makes it so you can't put it on another
12:09	17	That's why I say that.	12:12	17	machine and make it work, that's us.
12:09	18	Q. Which item?	12:13	18	Q. Okay. And you're saying you had this belief.
12:09	19	A. The java applet.	12:13	19	Okay, I think I understand what you're saying, but you
12:09	20	Q. And you're saying this is a reference to an Adobe	12:13	20	had this belief when?
12:09	21	platform?	12:13	21	A. For me.
12:09	22	A. I believe that when we said Next Generation	12:13	22	Q. 2003?
12:09	23	System, we were intending this to describe our Air	12:13	23	A. For me when I understood, you know, when I
12:09	24	version of The Envelope, The Container.	12:13	24	finally kind of.
12:10	25	Q. In your -- when you were working on the Adobe	12:13	25	VIDEOGRAPHER: Microphone.

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12:10	1	project, did you familiarize yourself with the Adobe	12:13	1	A. For me, I think starting early on when I was
12:10	2	technology in the DRM space?	12:13	2	working at Deskgate, and finally kind of understood the
12:10	3	A. Only superficially, you know, so I could	12:13	3	scope of those patents that were developed there. I
12:10	4	understand Seth and talking about, you know, the	12:13	4	felt personally all along from early on that there were
12:10	5	integrated run time, the W integrated run time. And	12:13	5	most companies would be infringers.
12:10	6	what would be required product-wise to get that to work,	12:14	6	Q. And by the time that you submitted your own
12:10	7	for example, the java applet distribution server.	12:14	7	patent application in 2003, you had that belief?
12:10	8	Q. Did anyone within DigitalContainer suggest that	12:14	8	MR. PRICE: Objection form.
12:10	9	Adobe was infringing any of the DigitalContainers family	12:14	9	A. Yes. I guess since my beliefs started before
12:10	10	of patents?	12:14	10	that, I would say, yes.
12:10	11	MR. PRICE: Objection. Let me caution the	12:14	11	Q. If you'd turn to Page 20, do you have that in
12:10	12	witness not to reveal any privileged information.	12:14	12	front of you?
12:10	13	A. I don't recall.	12:14	13	A. Yes, sir.
12:10	14	Q. Did you ever have a suspicion that Adobe was	12:14	14	Q. And that's the title Next Generation System
12:11	15	infringing on any of the DigitalContainers patents?	12:14	15	Encryption? Actually, let me go back one to 19.
12:11	16	MR. PRICE: Same caution.	12:14	16	A. Yes, sir.
12:11	17	A. You know, we thought that our portfolio described	12:14	17	Q. Let me go back even one more to 18 to where we
12:11	18	a very basic system that pretty much any company was	12:14	18	were. You have that reference to in the second set of
12:11	19	going to violate if they decided to do these kinds of	12:14	19	the second list, it refers to Microsoft Active
12:11	20	operations really. You know, we were there early and we	12:14	20	Directory; do you see that?
12:11	21	felt there would be a lot of infringers, you know.	12:14	21	A. Um-hmm.
12:11	22	So, that was not my end of the company, but	12:14	22	Q. You need to answer with a word.
12:11	23	that's, you know, this is a really basic process. You	12:15	23	A. Yes.
12:11	24	got to kind of do some of it if you want to send people	12:15	24	Q. What is that referring to?
12:11	25	stuff and have it be secure. So, I think in my mind,	12:15	25	A. Well, you know, that entire list is server

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12:15	1 security products.	12:19	1 A. Yes.
12:15	2 Q. Can you describe what?	12:19	2 Q. And this describes how your invention works; is
12:15	3 A. I don't know even know what a Microsoft Active	12:19	3 that correct?
12:15	4 Directory is frankly.	12:19	4 A. I think this was taken from some description,
12:15	5 Q. Did you know at the time that you created this	12:20	5 yes.
12:15	6 chart?	12:20	6 Q. Okay. And what was the purpose of including this
12:15	7 A. No.	12:20	7 in this document?
12:15	8 Q. You just included it?	12:20	8 A. I don't know. I didn't create this document.
12:15	9 A. Well, I did the chart part. Okay, that's my -- I	12:20	9 Q. And the next page, which is 23, that's also a
12:15	10 do the drawings like that. This stuff I don't know	12:20	10 description of your invention; is that correct?
12:15	11 about.	12:20	11 A. Well, it's the same list.
12:16	12 Q. Turning to the next page, can you describe what	12:20	12 Q. Oh, it's a continued? I see.
12:16	13 this shows?	12:20	13 A. Yeah, it's a continuation.
12:16	14 A. Oh, 019?	12:20	14 Q. So, the answer's yes, then?
12:16	15 Q. Yes.	12:20	15 A. Yes, sir.
12:16	16 A. Boy, that's a good question. This was a -- this	12:20	16 Q. Page 24?
12:16	17 was a drawing describing some of our plans. And I know	12:20	17 A. Yes, sir.
12:16	18 that we, you know, the open mobile alliance with the old	12:21	18 Q. And is it your belief that the document was
12:16	19 make was big then. And kind of think we wanted to	12:21	19 prepared around 2005?
12:17	20 demonstrate that we could operate in that system, that's	12:21	20 A. I have no idea honestly. I do not know.
12:17	21 all.	12:21	21 Q. We can tell that it's after 2004, right after
12:17	22 Q. On the left side you see where it says -- never	12:22	22 August 2004 based on Page 93?
12:17	23 mind that.	12:22	23 A. 12093?
12:17	24 On 20, Page 20 entitled Next Generation System	12:22	24 Q. Yeah.
12:17	25 Encryption, what are you showing here?	12:22	25 A. It would certainly infer that, wouldn't it?

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12:17	1 A. Now, that is my drawing. That came out of work	12:22	1 Q. If you turn to Page 07 through 09, if you would?
12:17	2 on the secure patent. So, this was our -- this starts	12:22	2 A. Yes, sir.
12:17	3 getting into, you know, these drawings were from a	12:22	3 Q. Did you create this list?
12:17	4 number of different things. As you can see, it's very	12:23	4 A. Yes.
12:17	5 similar to the drawing in securing.	12:23	5 Q. And the regulating access to digital content,
12:18	6 Q. This schematic shows a system that is covered by	12:23	6 that's a description to the 541 Patent?
12:18	7 your 741 Patent, correct?	12:23	7 A. Yes.
12:18	8 A. I'm not sure that's true. I would say that this	12:23	8 Q. And controlling access to electronic content
12:18	9 was an early evolution of the concept. Well, it says	12:23	9 that's --
12:18	10 securing Covered By Securing Digital Content, so it	12:23	10 A. No longer is in the world. Controlling never off
12:18	11 seems to me this developed a little more after that, but	12:23	11 the ground, so.
12:18	12 it says right there black and white.	12:23	12 Q. And the tracking electronic content, that's the
12:18	13 Q. That's what it says, right?	12:23	13 purple?
12:18	14 A. Yeah.	12:23	14 A. Yes, sir.
12:18	15 Q. At least at the time that you prepared this chart	12:23	15 Q. And that's the 670 Patent?
12:18	16 you believe that the design on Page 13020 was covered by	12:23	16 A. Yes, sir.
12:18	17 the 741 Patent?	12:24	17 Q. And turning to Page 25, if you would?
12:18	18 A. Yes.	12:24	18 A. Yes, sir, 25.
12:19	19 Q. Page 21, what does this show?	12:24	19 Q. It shows this list of possible infringers. Have
12:19	20 A. Just pretty much the same thing.	12:24	20 you seen -- did you create this list?
12:19	21 Q. What's the difference between the two?	12:24	21 A. I did not.
12:19	22 A. That's a good question. It looks like they're	12:24	22 Q. Okay. Have you seen this list before?
12:19	23 exactly the same thing to me.	12:24	23 A. Probably, I don't know. Probably. I don't know.
12:19	24 Q. If you turn to Page 13022, this is something you	12:24	24 I've seen many lists.
12:19	25 prepared too on your securing digital content concept?	12:24	25 Q. Do you know if any action was taken to address

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03:25	1	A. Well, we were attempting to perform a similar	03:28	1	systems used by Adobe, right?
03:25	2	level security function without a commercial PKI system	03:28	2	MR. PRICE: Objection form.
03:26	3	entirely in our own structure with just very minimal	03:28	3	A. This is in the scope of this PKI public private
03:26	4	data transfer between the client and our server and our	03:29	4	key system, and that that aspect, it is different.
03:26	5	proprietary back end.	03:29	5	Q. So, you're saying at the time you knew that Adobe
03:26	6	Q. And do you know whether anyone else had	03:29	6	had other systems that were the same as the
03:26	7	accomplished that at that time?	03:29	7	DigitalContainer systems. Does that seem a little
03:26	8	A. No, I don't.	03:29	8	farfetched?
03:26	9	Q. Do you know whether that was new?	03:29	9	A. In my experience.
03:26	10	A. I was under the impression it was new.	03:29	10	MR. PRICE: Let me object, form.
03:26	11	Q. Before you submitted your patent had you done any	03:29	11	A. You know, the -- when you purchased an Adobe
03:26	12	review of the literature of the different types of	03:29	12	product, which I use and quite fond of by the way, the
03:26	13	systems out there?	03:29	13	concept in which it is, you know, authorized and tied to
03:26	14	A. No. That was as far as I'm concerned the	03:29	14	you and your device is I thought was all over us.
03:26	15	technical side of -- that was really, you know, our	03:29	15	Q. Did you report that to management and tell them
03:26	16	engineers purvey. And my side was trying to work out	03:29	16	that you thought their business plans were wrong?
03:26	17	the progression (SIC) logic.	03:29	17	A. Well, I never read this, for one thing, but we
03:27	18	Q. If you turn to Page 24?	03:30	18	did, you know, our key system was unique, so in that
03:27	19	A. Okay.	03:30	19	aspect, it is different. The general process, though,
03:27	20	Q. And you see where it says at the last paragraph:	03:30	20	quite similar.
03:27	21	Importantly, DCS, that's the DigitalContainer Solution,	03:30	21	Q. I see. So, the difference between what Adobe
03:27	22	possesses a significant competitive advantage in the	03:30	22	does and the DigitalContainer patents is the way the key
03:27	23	marketplace against companies such as Adobe?	03:30	23	system works; is that correct?
03:27	24	A. I do see that paragraph.	03:30	24	MR. PRICE: Objection form.
03:27	25	Q. And did you agree with that at the time?	03:30	25	A. The fact that there apparently was a third party

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03:27	1	A. Yes.	03:30	1	trusted key server, public key server.
03:27	2	Q. And it says: All of these competitors use a	03:30	2	Q. Do you know whether Adobe was using a third party
03:27	3	public key system to protect the digital content as	03:30	3	key server in 2002?
03:27	4	discussed earlier.	03:30	4	A. No.
03:28	5	Do you see that?	03:30	5	Q. You have no idea at all in the world, do you?
03:28	6	A. Yes, sir.	03:30	6	A. No, um-hmm.
03:28	7	Q. And that's referring to Adobe?	03:30	7	Q. Do you have any explanation why in the business
03:28	8	A. Yes, sir.	03:30	8	plan they didn't say, but Adobe has other business plans
03:28	9	Q. And it's stating that the system used by Adobe is	03:30	9	that are actually infringing?
03:28	10	different from the patented DigitalContainer system;	03:31	10	MR. PRICE: Objection form.
03:28	11	isn't that what that's saying in this paragraph?	03:31	11	A. No, I don't.
03:28	12	A. As far as using a public key system in that	03:31	12	Q. You'll agree generally in the 2002 business plan
03:28	13	detail, yes.	03:31	13	DigitalContainers is distinguishing the difference
03:28	14	Q. When you say that detail?	03:31	14	between the DRM systems it has patented versus the DRM
03:28	15	A. Well.	03:31	15	systems that Adobe is using?
03:28	16	Q. This is -- let me just finish.	03:31	16	MR. PRICE: Object to the form.
03:28	17	A. Excuse me.	03:31	17	A. Could you repeat that, please?
03:28	18	Q. Let me just ask a question. DigitalContainers is	03:31	18	MR. REINES: Could you read that back,
03:28	19	saying that its patented system has a significant	03:31	19	please.
03:28	20	competitive advantage against the companies such as	03:31	20	(Whereupon, the requested portion was read
03:28	21	Adobe, correct?	03:31	21	by the reporter.)
03:28	22	MR. PRICE: Objection to form.	03:31	22	A. As it says in this paragraph, the last paragraph
03:28	23	A. That's what it says.	03:31	23	in 23308, it specifically mentioned the public key
03:28	24	Q. And the reason is because the patented technology	03:31	24	system. In that aspect we were different from everybody
03:28	25	in the DigitalContainer patents is different from the	03:31	25	on earth in my knowledge. In the basic concepts of

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03:32	1 regulating, they're all over us. I'm sorry, I truly	03:34	1 MR. PRICE: Objection to form.
03:32	2 believe that.	03:34	2 A. I would think that it does.
03:32	3 Q. And you knew in 2002, right?	03:34	3 Q. And what system of theirs?
03:32	4 A. I thought as far as I felt that the process was	03:34	4 A. I think that their general application locking
03:32	5 an infringement?	03:34	5 system like you bought, like I bought Creative Suite.
03:32	6 Q. Yes.	03:35	6 Wonderful program, by the way. It is locked to your
03:32	7 A. Yeah.	03:35	7 machine when you buy it. You can't copy that to anybody
03:32	8 Q. Did you share that with management?	03:35	8 else's machine. So, that basic process at least part of
03:32	9 A. I think --	03:35	9 741 covers. I do believe it's infringing.
03:32	10 Q. You must have had discussions with Chip over	03:35	10 MR. PRICE: Objection form to the last
03:32	11 drinks or whatever?	03:35	11 question, please.
03:32	12 MR. PRICE: Objection to form.	03:35	12 BY MR. REINES:
03:32	13 A. We thought all these companies were infringing	03:35	13 Q. Do you know what the encryption scheme is in
03:32	14 because, you know, we had a basic thing and somebody has	03:35	14 terms of how the keys are, where they're held, how
03:32	15 to do it. Excuse me, that was my feeling.	03:35	15 they're made?
03:32	16 Q. You felt strong about it? You're feeling pretty	03:35	16 A. I assumed it was a PKI system.
03:32	17 strong about it now?	03:35	17 Q. Do you know?
03:32	18 A. Well, no, I'm just saying that, you know, there's	03:35	18 A. I don't know for sure. I never did research. I
03:32	19 no -- I mean, we honestly felt like that we had a very	03:35	19 never did research their software.
03:32	20 basic process that can only be done only a couple of	03:35	20 Q. And do you know if they -- if Adobe uses a
03:32	21 ways, and that there's anybody doing this process was	03:35	21 container ID to create keys at any point in its process?
03:32	22 probably infringing on us. I mean, that was my view as	03:35	22 A. No, I do not know.
03:32	23 a layman. That's why we got you guys.	03:35	23 Q. You've no idea at all?
03:33	24 Q. And you didn't hide that from your Mr. Venters,	03:35	24 A. No.
03:33	25 did you?	03:35	25 Q. And how about EA?

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03:33	1 A. Hide the fact that I thought these companies were	03:35	1 A. I don't really know personally.
03:33	2 probably infringing?	03:36	2 Q. But you're still -- you're sure they're
03:33	3 Q. Right.	03:36	3 infringing your 741 patent?
03:33	4 A. No, I didn't hide it, but I was kind of concerned	03:36	4 MR. PRICE: Object to the form.
03:33	5 with other things, like survival.	03:36	5 A. Well, of the 741, I don't know.
03:33	6 Q. Okay. And in terms of when Digital Containers	03:36	6 Q. You're familiar with the concept of decentralized
03:33	7 and Digital Reg pursued patent infringement against	03:36	7 super DRM or centralized DRM? Are those concepts
03:33	8 these companies, that's not something that you know	03:36	8 familiar to you?
03:33	9 about. That was something -- that was somebody else's	03:36	9 A. Hazy world of marketing, yes, I think they are.
03:33	10 job?	03:36	10 Q. Okay, well, why don't -- I'll show you a document
03:33	11 A. No, I don't know anything about that.	03:36	11 and we'll talk about it.
03:33	12 Q. And did you ever ask them why they weren't	03:36	12 Marked as Exhibit 13 is a document entitled with
03:33	13 pursuing people for infringement if that's what you	03:36	13 the heading Purpose of the Business Plan. It's DIGREG
03:33	14 believe was happening?	03:37	14 11264 verse 11307. If you turn to 11285, please. Okay,
03:33	15 A. No, I don't. I mean, yeah, our concern at the	03:37	15 do you see the reference to Decentralized SuperDRM
03:34	16 time was funding, you know. So, I -- this was really,	03:37	16 versus centralized DRM?
03:34	17 you know, a lawsuit was not on my mind at the time	03:37	17 A. Yes, sir.
03:34	18 because I'm not in that area.	03:37	18 Q. Okay. And what do you understand the difference
03:34	19 Q. And in terms of your 741 Patent, did you believe	03:37	19 to be from a technology and business model perspective?
03:34	20 right from the start that that was being infringed by	03:37	20 A. Again, you know, to me this is referring to the
03:34	21 everybody? Everyone had to infringe that?	03:39	21 need to employ, you know, these third party PKI systems.
03:34	22 A. 741, oh, I don't know. That's a good question.	03:39	22 Q. So, your understanding is that --
03:34	23 I'm not sure.	03:39	23 A. And I, I'm sorry, go ahead.
03:34	24 Q. Do you know whether Adobe infringes the 741	03:39	24 Q. No, you go.
03:34	25 Patent?	03:39	25 A. I know that we felt that our lightweight system

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03:39	1 where many clients were passing very small amounts of	03:43	1 of the definitions I found and provided to our
03:39	2 information, we felt like that's the advantage.	03:43	2 attorneys.
03:39	3 Q. And with respect to the Microsoft Windows system,	03:43	3 Q. When you say the companies in terms of the
03:39	4 was it your understanding that that was used as a	03:43	4 documents, who are you referring to, which companies?
03:39	5 third-party PKI?	03:43	5 A. DigitalContainers, Digital Reg, DRM Technologies,
03:39	6 A. Well, I was pretty -- I was under the impression	03:43	6 LLC. I thought that's what the subpoena was talking
03:39	7 they did use a public key server, yeah.	03:43	7 about.
03:39	8 Q. That was a Microsoft server or some third party?	03:43	8 Q. Did you differentiate between those three for who
03:39	9 MR. PRICE: Objection to form.	03:43	9 had which documents?
03:39	10 A. I don't know the answer to that question.	03:43	10 A. No.
03:40	11 Q. So, are you aware of PKI systems where the public	03:43	11 Q. Why not?
03:40	12 key is maintained by the DRM service provider rather	03:43	12 A. Because they were all, you know, I kept my
03:40	13 than some third party?	03:43	13 documents in a kind of a one place, and I didn't even
03:40	14 A. Not really, no.	03:43	14 think about that concept.
03:40	15 Q. And you don't know whether Microsoft,	03:43	15 Q. When did you first have representation in this
03:40	16 RealNetworks, Apple, Macrovision, IBM, Softwrap, Clear	03:44	16 matter? You said you were on some phone calls over the
03:40	17 Key, AltNet or DMOD used that or not?	03:44	17 time regarding this litigation?
03:40	18 A. I'm not aware specifically, no.	03:44	18 A. In -- when was I aware that we had
03:40	19 Q. They could, they couldn't, you just don't know?	03:44	19 representation?
03:40	20 A. I don't know.	03:44	20 Q. Yeah.
03:40	21 Q. Were you involved in attempting to sell the	03:44	21 MR. PRICE: Objection to form.
03:41	22 DigitalContainer system to customers?	03:44	22 A. Boy, that's a good question. Ooh, boy. I,
03:41	23 A. No.	03:44	23 honestly, I have sat in on a few calls whenever they --
03:41	24 Q. How did you decide which documents you were going	03:44	24 week, year, I don't know exactly.
03:42	25 to produce in connection with the requests in this case?	03:44	25 Q. When you say you've sat in on a few calls, what

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03:42	1 A. I -- as I understood the subpoena, anything	03:44	1 were they?
03:42	2 related. You know, I searched my machine for anything	03:44	2 A. Just listening to the comments by people.
03:42	3 related and I provided those.	03:44	3 Q. Just to stay updated?
03:42	4 Q. When you say "anything related," related to what?	03:44	4 A. Yeah, exactly.
03:42	5 A. Our company in general. Almost four thousand	03:44	5 Q. You need to let me ask questions.
03:42	6 files I think, as I recall.	03:44	6 MR. PRICE: And don't reveal the subject
03:42	7 Q. So, when you say our company in general, you're	03:44	7 matter of privileged discussions on the phone. And
03:42	8 referring to Dig Reg?	03:44	8 wait for the question.
03:42	9 A. DigitalContainers, Digital Reg, DRM Technologies,	03:45	9 BY MR. REINES:
03:42	10 LLC.	03:45	10 Q. Now I'm not even getting one word out.
03:42	11 Q. You consider those basically the same thing for	03:45	11 A. I'm sorry.
03:42	12 purposes of this?	03:45	12 Q. The purpose of your -- these phone calls that
03:42	13 A. Well, for purposes of --	03:45	13 you're referring to regarding by litigation was just for
03:42	14 MR. PRICE: Objection form.	03:45	14 you to stay apprised of what was going on in the
03:43	15 A. You know, I don't know. I don't know about that.	03:45	15 litigation?
03:43	16 I know that there's some legal differences. I'm not	03:45	16 A. Yes, sir.
03:43	17 sure.	03:45	17 Q. And you understand that the counsel's
03:43	18 Q. But in terms of the document, you don't divide	03:45	18 representing you as part of your relationship with
03:43	19 them out?	03:45	19 Digital Reg; is that right?
03:43	20 MR. PRICE: Same objection.	03:45	20 MR. PRICE: Object to the form.
03:43	21 A. Yeah, I try to. Everything remotely associated	03:45	21 BY MR. REINES:
03:43	22 with this case when I read the subpoena. And I didn't	03:45	22 Q. Are you paying for Dinovo Price yourself?
03:43	23 want to have somebody come get my machine and find out I	03:45	23 A. Not me.
03:43	24 had done something illegal. So, as far as I knew it,	03:45	24 Q. Okay. And you understand they're representing
03:43	25 anything related to the patents, the companies under any	03:45	25 you due to your affiliation with Digital Reg?

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04:51 1 knowledge.
 04:51 2 Q. When you were talking about successive recipients
 04:51 3 in the content of the 070 Patent with the previous
 04:52 4 attorney, Mr. Reines, do you recall that?
 04:52 5 A. Yes, sir.
 04:52 6 Q. And I think you said that successive recipient
 04:52 7 could be a server; do you recall that?
 04:52 8 A. I do.
 04:52 9 Q. But that server would have to be a server that
 04:52 10 receives a data from a previous recipient, wouldn't it?
 04:52 11 MR. PRICE: Objection form.
 04:52 12 A. Well, isn't that the definition of successive
 04:52 13 recipient?
 04:52 14 Q. That's what I'm asking you. Is that the
 04:52 15 definition that you would be using?
 04:52 16 MR. PRICE: Objection form.
 04:52 17 A. Yes.
 04:52 18 MR. BARCELO: All right, we don't have any
 04:52 19 further questions subject to the reservation of rights
 04:52 20 that I stated earlier.
 04:52 21 MR. PRICE: Mark?
 04:52 22 MR. LANG: We're not going to have any
 04:52 23 questions either.
 04:52 24 MR. PRICE: Okay, we're done.
 04:52 25 VIDEOPHOTOGRAPHER: Okay, this concludes today's

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1 STATE OF NORTH CAROLINA
 2 COUNTY OF DURHAM
 3
 4 REPORTER'S CERTIFICATE
 5 I, Regina Toppins, Shorthand Reporter and Notary
 6 Public in and for the State of North Carolina, do hereby
 7 certify that there came before me on Thursday, the 18th
 8 day of April, 2013, the person hereinbefore named, who
 9 was by me duly sworn to testify to the truth and nothing
 10 but the truth of his knowledge concerning the matters in
 11 controversy in this cause; that the witness was
 12 thereupon examined under oath, the examination reduced
 13 to typewriting under my direction, and the deposition is
 14 a true record of the testimony given by the witness.
 15 I further certify that I am neither attorney or
 16 counsel for, nor related to or employed by, any attorney
 17 or counsel employed by the parties hereto or financially
 18 interested in the action.
 19 IN WITNESS WHEREOF, I have hereto set my hand,
 20 this the 18th day of April, 2013.
 21
 22
 23
 24 Regina Toppins, Notary Public
 25 Notary Number: 200626300019

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04:52 1 deposition of Eugene B. Phillips, II; April the 18th,
 04:52 2 2013. We're going off the record. The time on the
 04:53 3 video monitor is 4:51 p.m. We're off the record.
 4 (DEPOSITION CONCLUDED AT 4:51 P.M.)
 5 (SIGNATURE RESERVED)
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